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Real Estate Tax Exemption For Federally Subsidized Low-Income Housing Corporations: *Rio Vista Non-Profit Housing Corp. v. County of Ramsey*

The Rio Vista Non-Profit Housing Corporation (Rio Vista) was organized to provide low-rent housing for families of modest income. The federal government subsidized Rio Vista's construction costs¹ and continues to subsidize part of its rental income.² From 1974 to 1976, Rio Vista paid real estate taxes on its property in accordance with a special provision of Minnesota law, which requires that housing for low- and moderate-income families be assessed at only twenty percent of market value.³ After paying taxes for the first half of 1976, Rio Vista brought an action to recover these taxes on the ground that it was a tax-exempt charity. The trial court denied recovery by ruling that Rio Vista did not qualify for a tax exemption be-

1. The federal government insured the \$829,900 loan that Rio Vista used to finance construction costs and the acquisition of land, pursuant to section 236 of the National Housing Act, 12 U.S.C. § 1715z-1 (1976). See *Rio Vista Non-Profit Hous. Corp. v. County of Ramsey*, 277 N.W.2d 187, 188 (Minn. 1979).

2. Rental income was financed under two federal programs: the Rent Supplement Program, Housing and Urban Development Act of 1965, § 101, 12 U.S.C. § 1701s (1976) and section 236 of the National Housing Act, 12 U.S.C. § 1715z-1 (1976). The Rent Supplement Program requires eligible tenants to expend no more than 25% of their income for rent. For the eligibility requirements of the program, see 12 U.S.C. § 1701s(c) (1976). The section 236 program requires eligible tenants to pay rent equal to 25% of their income or the "basic rent," whichever is greater, so long as that amount does not exceed the "fair market rent." "Basic rent" is determined according to payments of principal on the loan and of the one percent interest; "fair market rent" is determined from payments of principal, interest, and mortgage insurance. *Rio Vista Non-Profit Hous. Corp. v. County of Ramsey*, 277 N.W.2d at 188. According to the section 236 formula, in 1975 the basic rent of a two-bedroom apartment was \$165; the "fair market rent" was \$246. *Id.* at 188 n.1. To qualify for payments of monthly rent below the "fair market rent," a tenant's annual family income must not exceed certain amounts. *Id.* at 188 n.2. A tenant must also meet one of the following requirements:

- (1) Be a member of a family of two or more persons . . . who occupy the same unit; (2) a single person, 62 years of age or older; (3) physically handicapped; (4) a single person under 62 years of age, provided that no more than 10 percent of the available apartments are rented to such persons; or (5) a displacee.

Id. at 188-89 n.2.

3. See MINN. STAT. § 273.13(17) (1978).

cause it was not an institution of purely public charity.⁴ On appeal, the Minnesota Supreme Court reversed, *holding* that the corporation was an institution of purely public charity and therefore was entitled to an exemption from real estate taxation. *Rio Vista Non-Profit Housing Corp. v. County of Ramsey*, 277 N.W.2d 187, 192 (Minn. 1979).

Although the Minnesota Legislature has given municipalities the power to levy property taxes,⁵ that power is subject to constitutional and statutory provisions exempting certain property from taxation.⁶ One such exemption applies to institutions of purely public charity.⁷ This exemption confers an indirect subsidy⁸ and is usually justified as the *quid pro quo* for charities undertaking functions and services that the state would otherwise be required to perform.⁹ Some courts, in an effort to better articulate the rationale for the charitable exemption, have asserted that the exemption exists not only because charities perform functions that relieve the state of a duty to provide services, but also because charities conduct activities that further socially desirable objectives of the community.¹⁰ Under this broader rationale, the benefits that accrue to the community are thought to offset the loss of revenue that results from exemption.¹¹ Consistent with these justifications, the Minne-

4. 277 N.W.2d at 189.

5. See, e.g., MINN. STAT. § 412.251 (1978).

6. See MINN. CONST. art. 10, § 1; MINN. STAT. § 272.02 (1978 & Supp. 1979).

7. Minnesota's constitution provides that, "[t]axes shall be uniform upon the same class of subjects and shall be levied and collected for public purposes, but . . . institutions of purely public charity . . . shall be exempt from taxation except as provided in this section." MINN. CONST. art. 10, § 1. The exemption for purely public charities is codified in MINN. STAT. § 272.02(1)(6) (1978 & Supp. 1979). (The *Rio Vista* opinion inaccurately cites this provision as MINN. STAT. § 272.02(6) (1978).)

8. See Hilbert, *Illinois Property Tax Exemptions: A Call for Reform*, 25 DE PAUL L. REV. 585, 586, 599 (1976); Stimson, *The Exemption of Property from Taxation in the United States*, 18 MINN. L. REV. 411, 412 (1934).

9. E. FISCH, D. FREED & E. SCHACHTER, CHARITIES AND CHARITABLE FOUNDATIONS 602 (1974). See *John Tennant Memorial Homes, Inc. v. City of Pac. Grove*, 27 Cal. App. 3d 372, 382, 103 Cal. Rptr. 215, 222 (1972); *Lutheran Home, Inc. v. Board of County Comm'rs*, 211 Kan. 270, 277, 505 P.2d 1118, 1124 (1973); *Camping & Educ. Foundation v. State*, 282 Minn. 245, 252-53, 164 N.W.2d 369, 374 (1969); Note, *Taxation: Charitable Institutions: Effect of Tax Exemptions in Defining a Charity*, 23 CORNELL L.Q., 170, 171 (1938).

10. See *Stockton Civic Theatre v. Board of Supervisors*, 66 Cal. 2d 13, 19-20, 423 P.2d 810, 815, 56 Cal. Rptr. 658, 663 (1967); *Central Bd. on Care of Jewish Aged, Inc. v. Henson*, 120 Ga. App. 627, 629, 171 S.E.2d 747, 749 (1969); E. FISCH, D. FREED & E. SCHACHTER, *supra* note 9, at 603.

11. See *John Tennant Memorial Homes, Inc. v. City of Pac. Grove*, 27 Cal. App. 3d 372, 382, 103 Cal. Rptr. 215, 222 (1972); *People ex rel. Redfern v. Hopewell Farms*, 9 Ill. App. 3d 16, 17, 291 N.E.2d 288, 290 (1972); *Camping & Educ. Foundation v. State*, 282 Minn. 245, 252-53, 164 N.W.2d 369, 374 (1967).

sota Supreme Court has exempted organizations engaged in caring for the sick, aged, and infirm,¹² educating young people,¹³ operating facilities that promote the moral and educational welfare of youth,¹⁴ providing hospital care for the poor,¹⁵ and providing religious education.¹⁶

A liberal construction of exemption provisions results in the loss of a major source of municipal revenue¹⁷ and places a greater burden on nonexempt taxpayers,¹⁸ thus, these provi-

12. *See* Assembly Homes, Inc. v. Yellow Medicine County, 273 Minn. 197, 204, 140 N.W.2d 336, 341 (1968) (holding nursing home exempt from taxation).

13. *See* Junior Achievement, Inc. v. State, 271 Minn. 385, 392, 135 N.W.2d 881, 886 (1965) (holding exempt property used by a corporation to educate young people on the function of the American free enterprise system).

14. *See* Christian Business Men's Comm. v. State, 228 Minn. 549, 554-62, 38 N.W.2d 803, 808-12 (1949). (Christian laymen's organization that operates youth center to bring youth under religious influence is entitled to exemption).

15. *See* Mayo Foundation v. Commissioner of Revenue, 306 Minn. 25, 37-38, 236 N.W.2d 767, 773-74 (1975) (medical clinic and foundation organized and operated for exclusively charitable and educational purposes held exempt); County of Hennepin v. Brotherhood of Church of Gethsemane, 27 Minn. 460, 462, 8 N.W. 595, 596 (1881) (hospital that cared for all without regard to ability to pay held exempt as purely public charity).

Public hospitals are explicitly exempted in both MINN. CONST. art. 10, § 1, and MINN. STAT. § 272.02(1)(3) (1978 & Supp. 1979). Similar institutions that do not qualify as public hospitals may nonetheless be considered under the broader category of purely public charities. *See* Mayo Foundation v. Commissioner of Revenue, 306 Minn. at 37-38, 236 N.W.2d at 773-74.

16. *See* County of Hennepin v. Grace, 27 Minn. 503, 504-05, 8 N.W. 761, 762 (1881) (holding exempt parochial school providing religious education without remuneration). Exemptions for "all seminaries of learning, all churches, church property, [and] houses of worship" are contained in MINN. CONST. art. 10, § 1, and are codified in MINN. STAT. § 272.02(1)(4)-(5) (1978 & Supp. 1979).

17. Property taxes are the most important source of municipal revenue. For example, in 1970 to 1971 they comprised 64% of general revenue raised by local governments. ADVISORY COMM'N OF INTERGOVERNMENTAL RELATIONS, THE PROPERTY TAX IN A CHANGING ENVIRONMENT 99 (1974). In 1972, 84% of all local tax revenue and 36.4% of all local government revenue from all sources came from property taxes. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES 242, 245 (1974). *See also* E. FISCH, D. FREED & E. SCHACHTER, *supra* note 9, at 599-60. ("Property taxes are an important source of revenue for governmental subdivisions which are finding it increasingly difficult to obtain adequate funds." (footnote omitted)); O. OLDMAN & F. SCHOETTLE, STATE AND LOCAL TAXES AND FINANCE 137 (1974) ("As a producer of revenue, the property tax ranks second only to the federal personal income tax . . ."); Cypen, *Access to Health Care Services for the Poor: Existing Programs and Limitations*, 31 U. MIAMI L. REV. 127, 152 (1976) ("To freely allow tax exemptions would . . . inevitably result in the depletion of sources of revenue from taxation."); Note, *Nebraska Supreme Court Approves State Property Tax Exemption for Nonprofit Nursing Home Corporation Closely Associated with For-Profit Corporations*, 12 CREIGHTON L. REV. 1331, 1332 (1979) ("The ratio of tax exempt property to taxable property is steadily increasing. Because of the resulting loss of tax revenues, local government subdivisions cast a jaundiced eye upon property tax exemptions.").

18. *See* Miami Battlecreek v. Lummus, 140 Fla. 718, 728, 192 So. 211, 216

sions have generally been strictly construed.¹⁹ For the same reasons parties seeking an exemption bear the burden of proving their entitlement to it.²⁰ The doctrine of strict construction and the difficulties taxpayers have in bearing the burden of proof explain why taxation has been the rule and exemption has been the exception.²¹ In some jurisdictions, however, the doctrine of strict construction has been eroding. Courts in these jurisdictions pay "lip service" to the doctrine but fail to apply it to exemption provisions.²²

Courts generally use a vague definition of charity when deciding charitable exemption cases.²³ The Minnesota Supreme

(1939); *Haines v. St. Petersburg Methodist Home, Inc.*, 173 So. 2d 176, 185 (Dist. Ct. App. 1965), *cert. denied*, 183 So. 2d 211 (Fla. 1965); *Hartt, Ad Valorem Taxes and Non-Profit Health-Care Facilities*, 39 TEX. B.J. 864, 865 (1976).

19. See *Telco Leasing, Inc. v. Allphin*, 63 Ill. 2d 305, 310, 347 N.E.2d 729, 731 (1976); *Iowa Movers & Warehousemen's Ass'n v. Briggs*, 237 N.W.2d 759, 769-70 (Iowa), *cert. denied*, 429 U.S. 832 (1976); *Topeka Cemetery Ass'n v. Schnellbacher*, 218 Kan. 39, 41-42, 542 P.2d 278, 281 (1975); *Abex Corp. v. Commissioner of Taxation*, 295 Minn. 445, 451-52, 207 N.W.2d 37, 41-42 (1973); *Camping & Educ. Foundation v. State*, 282 Minn. 245, 250, 164 N.W.2d 369, 372 (1969); *American Ry. Express Co. v. Holm*, 169 Minn. 323, 325, 211 N.W. 467, 467 (1926); *Koner v. Procaccino*, 39 N.Y.2d 258, 264, 347 N.E.2d 658, 661, 383 N.Y.S.2d 295, 299 (1976). *But see* *Book Agents of the Methodist Episcopal Church, S. v. State Bd. of Equalization*, 513 S.W.2d 514, 521 (Tenn. 1974).

The rule of strict construction in favor of taxation should not be confused with the rule that when a statute is capable of two constructions and the intent of the legislature is in doubt, such doubt must be resolved in favor of the taxpayer. See, e.g., *American Ry. Express Co. v. Holm*, 169 Minn. 323, 325, 211 N.W. 467, 467 (1926).

20. See *First Nat'l Bank v. State Property Tax Appeal Bd.*, 60 Ill. App. 3d 810, 812, 377 N.E.2d 339, 341 (1978); *Evangelical Lutheran Good Samaritan Soc'y v. Board of Review*, 267 N.W.2d 413, 414 (Iowa 1978); *Federal Land Bank v. State*, 274 N.W.2d 580, 582-83 (N.D. 1979); *In re Middlebury College Sales & Use Tax*, 137 Vt. 28, 32, 400 A.2d 965, 967 (1979); *Sisters of St. Mary v. City of Madison*, 89 Wis. 2d 372, 378, 278 N.W.2d 814, 817 (1979).

21. See *Dow City Senior Citizens Hous., Inc. v. Board of Review*, 230 N.W.2d 497, 499 (Iowa 1975); *Camping & Educ. Foundation v. State*, 282 Minn. 245, 250, 164 N.W.2d 369, 372 (1969); *Wisconsin Tel. Co. v. City of Milwaukee*, 85 Wis. 2d 447, 456, 271 N.W.2d 362, 366 (1978); Note, *Rental Housing for the Elderly as a Tax Exempt Charity and Retention of the No Partial Exemption Rule*, 44 Mo. L. Rev. 154, 156 n.13 (1979).

22. See *Honeywell Information Sys., Inc. v. County of Sonoma*, 44 Cal. App. 3d 23, 27-28, 118 Cal. Rptr. 422, 425 (1974); *Johnson v. Presbyterian Homes of Synod, Inc.*, 239 So. 2d 256, 262 (Fla. 1970); *Town of Gilford v. State Tax Comm'n*, 108 N.H. 167, 168-69, 229 A.2d 691, 693 (1967); Note, *supra* note 21, at 156-57 (citing *Missouri United Methodist Retirement Homes v. State Tax Comm'n*, 522 S.W.2d 745, 751 (Mo. 1975)).

23. One of the definitions of charity, widely quoted and approved by American courts, states:

A charity, in the legal sense, may be . . . defined as a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffer-

Court, however, uses a six-factor standard—the *North Star* test—to evaluate the charitable nature of an organization:

(1) whether the stated purpose of the undertaking is to be helpful to others without immediate expectation of material reward; (2) whether the entity involved is supported by donations and gifts in whole or in part; (3) whether the recipients of the 'charity' are required to pay for the assistance received in whole or in part; (4) whether the income received from gifts and donations and charges to users produces a profit to the charitable institution; (5) whether the beneficiaries of the 'charity' are restricted or unrestricted and, if restricted, whether the class of persons to whom the charity is made available is one having a reasonable relationship to the charitable objectives; (6) whether dividends, in form or substance, or assets upon dissolution are available to private interest.²⁴

In *Rio Vista*, the court applied the *North Star* test and determined that all six factors of the test had been satisfied.²⁵ The stipulated facts²⁶ of the case easily justified this finding with respect to the first, fourth, and sixth factors. The first factor was satisfied because *Rio Vista*'s bylaws and articles of incorporation indicated that the corporation was formed for a charitable purpose.²⁷ The fourth factor was moot since *Rio Vista* had experienced deficits from 1974 to 1976.²⁸ The sixth factor was satisfied because *Rio Vista*'s articles of incorporation

ing or constraint, by assisting them to establish themselves in life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government.

Jackson v. Phillips, 96 Mass. (14 Allen) 539, 556 (1867). For examples of cases quoting this definition, see *DeJong v. Commissioner*, 309 F.2d 373, 377 (9th Cir. 1962); *Gossett v. Swinney*, 53 F.2d 772, 777 (8th Cir. 1931); *Bok v. McCaughn*, 42 F.2d 616, 619 (3d Cir. 1930); *American Water Works Ass'n v. Board of Assessment Appeals*, 38 Colo. App. 341, 563 P.2d 359, 362 (1976); *Raser v. Johnson*, 9 Ill. App. 375, 379, 132 N.E.2d 819, 821 (1956); *Frisco Employees' Hosp. Ass'n v. State Tax Comm'n*, 381 S.W.2d 772, 774 (Mo. 1964).

24. *North Star Research Inst. v. County of Hennepin*, 306 Minn. 1, 6, 236 N.W.2d 754, 757 (1975).

25. Having decided that *Rio Vista* was an institution of purely public charity, the court rejected the state's contention that MINN. STAT. 273.13(17) (1978), which provides that title II housing for the elderly and for low- and moderate-income families shall be assessed at 20 percent of market value, evidences a legislative intent that such housing not be allowed a tax exemption. The court reasoned that because the taxing statute, *id.* § 273.13(1), refers to property "subject to a general property tax," it could not apply to the *Rio Vista* housing, which was exempt from such tax as a charitable organization. The court found further that MINN. STAT. § 272.02 (1978 & Supp. 1979), which provides exemptions for institutions of purely public charity, is limited only by two provisions of the Minnesota Statutes, sections 272.02 and 272.025, and that neither of these provisions mention title II housing. If the legislature had meant to deny exemption to such housing, the court concluded, those provisions would have done so. 277 N.W.2d at 192.

26. 277 N.W.2d at 188-89.

27. *Id.* at 190.

28. *Id.*

precluded a distribution of assets to private persons upon dissolution.²⁹

Rio Vista did not as easily satisfy the second, third, and fifth factors of the *North Star* test. The court concluded that *Rio Vista* met the second factor—that the entity is supported by gifts and donations—even though the donations came solely from the federal government rather than from private benefactors. In reaching this conclusion, the court relied on decisions holding that organizations which provide federally subsidized housing for the elderly or handicapped qualify for property tax exemption.³⁰ The court concluded that *Rio Vista* met the third factor—that recipients of the charity must not be required to pay for the assistance received—even though the residents of *Rio Vista* were required to pay partial rent. This conclusion rested on the finding that the rent paid by *Rio Vista* tenants was not a “major source of revenue” to the project since a sizable portion of the total rent was paid by the federal government.³¹ In applying the fifth factor, the court did not discuss the requirement that there be a reasonable relationship between the class of beneficiaries and the charitable objectives. Instead, it looked simply to whether the housing project lessened the burdens of government.³² The court found that *Rio Vista* lessened the burdens of government, since without organizations such as *Rio Vista* the government might seek to implement low-rent housing programs through government agencies.³³

The *Rio Vista* court's disposition of the second, third, and fifth factors of the *North Star* test illustrates its willingness to liberally construe the tax exemption statute and reject the traditional rule of strict construction.³⁴ Such a liberal construction is unjustified not only from a doctrinal standpoint but also

29. *Id.*

30. *Id.* at 191.

31. *Id.* at 191-92.

32. The court found the factor of the relationship between the class of beneficiaries and the charitable objectives to be “intertwined” with the question whether the exemption lessens the burdens of government. *Id.* at 191. The court reached this conclusion on the basis of the definition of charity articulated in a prior Minnesota case: “Charity is broadly defined as a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, ‘by . . . lessening the burdens of government.’” *Junior Achievement, Inc. v. State*, 271 Minn. 385, 390, 135 N.W.2d 881, 885 (1965) (quoting 15 Am. Jur. 2d *Charities* § 3).

33. 277 N.W.2d at 191.

34. See text accompanying notes 17-22 *supra*.

as a matter of policy, because a liberal construction inequitably increases the burden on municipal governments.

In determining that Rio Vista satisfied the second factor of the *North Star* test, the court decided that governmental assistance qualifies as a donation. In reaching this decision the court relied on an analogy with government funding directed to the elderly or handicapped.³⁵ Organizations providing care for the elderly and handicapped, however, are unlike those that provide low-income housing; the former are traditional, recognized charities, and the latter are not.³⁶ Housing programs benefiting the handicapped and elderly have been held exempt because they supply essential physical and emotional services that the beneficiaries cannot provide for themselves.³⁷ By contrast, housing programs for low- and moderate-income families do not supply the same services. Instead, such programs simply enable the beneficiaries to live in somewhat better housing than they could otherwise afford.³⁸ To ignore the doctrine of strict construction in this manner will certainly result in an unwarranted increase in the number of institutions that qualify as purely public charities.

The court's resolution of the third factor in favor of Rio Vista is also indicative of the movement away from strict construction. The court suggested that the federal government provided the "major source of revenue to the project,"³⁹ and underemphasized the significant payments that Rio Vista exacted from all recipients of its "charity." Even with the most generous subsidy available under the applicable federal rent subsidy programs, the tenant was required to pay at least twenty-five percent of his income for rent or else face evic-

35. *Id.* at 190-91 (citing *Banahan v. Presbyterian Hous. Corp.*, 553 S.W.2d 48 (Ky. 1977); *Assembly Homes, Inc. v. Yellow Medicine County*, 273 Minn. 197, 140 N.W.2d 336 (1966); *Franciscan Tertiary Province v. State Tax Comm'n*, 566 S.W.2d 213 (Mo. 1978)).

36. The court, in fact, admitted that it had "never addressed the precise issue" of the charitable nature of government-funded low- and moderate-income housing. 277 N.W.2d at 190.

37. *See, e.g.*, *Banahan v. Presbyterian Hous. Corp.*, 553 S.W.2d 48 (Ky. 1977) (housing and related services specially designed to meet needs of aged and handicapped); *Assembly Homes, Inc. v. Yellow Medicine County*, 273 Minn. 197, 140 N.W.2d 336 (1966) (housing and related facilities and services provided for the elderly and mentally retarded); *Franciscan Tertiary Province v. State Tax Comm'n*, 566 S.W.2d 213 (Mo. 1978) (housing, social, and medical services for the elderly). All of the above cases were cited by the *Rio Vista* court in support of its conclusion that the second factor was met.

38. *See Metropolitan Pittsburgh Non-Profit Hous. Corp. v. Board of Property Assessment*, 480 Pa. 622, 391 A.2d 1059, 1061-62 (1978).

39. 277 N.W.2d at 192.

tion.⁴⁰ Courts that have denied exemption to low-income housing projects premised their decisions on the amount of rent tenants were obligated to contribute.⁴¹ The mode of analysis employed by these courts is more appropriate; it focuses on the issue of whether the recipients of a supposed charity are required to make substantial payments rather than confusing the issue with a calculation of the major source of funds.⁴² Moreover, even if the *Rio Vista* court's general approach to the third factor were appropriate, the application of the approach to the facts of the case is incorrect. *Rio Vista* received more than half its revenues from the rents paid by tenants.⁴³ The "major source of revenue to the project" was therefore not the federal government.

The fifth factor of the *North Star* test requires the court to decide whether the restrictions, if any, on the class of people benefited by the charity bear a "reasonable relationship to the charitable objectives."⁴⁴ The court in *Rio Vista*, however, chose instead to evaluate whether the program "lessen[ed] the burdens of government."⁴⁵ Although the court concluded that *Rio*

40. See note 2 *supra*.

41. See *Mountain View Homes, Inc. v. State Tax Comm'n*, 77 N.M. 649, 427 P.2d 13 (1967); *London Square Village, Inc. v. Oklahoma County Equalization & Excise Bd.*, 559 P.2d 1224 (Okla. 1977); *Metropolitan Pittsburgh Non-Profit Hous. Corp. v. Board of Property Assessment*, 480 Pa. 622, 391 A.2d 1059 (1978).

42. Even in cases involving institutions that have required all recipients of their benefits to pay, some courts have held the institutions to be of a charitable nature and therefore exempt. The required payment, however, can only be a nominal charge or an amount not commensurate with the benefits received. See *Memorial Hosp. v. Sparks*, 9 Ariz. App. 478, 481-82, 453 P.2d 989, 992-93 (1969); *Fifield Manor v. County of Los Angeles*, 188 Cal. App. 2d 1, 12, 10 Cal. Rptr. 242, 254 (1961). This authority is clearly not applicable to the facts of *Rio Vista* given the substantial nature of the tenant's payment for rent. See note 43 *infra*.

43. *Rio Vista* had gross revenues and benefits of \$121,811.53 in the fiscal year ending on June 30, 1976. This amount included \$64,630.00 in tenant-paid rent, \$16,970.00 in federal rent supplement payments, and \$40,211.53 in federal interest reduction payments. Appellant's Brief and Appendix at 15, *Rio Vista Non-Profit Hous. Corp. v. County of Ramsey*, 277 N.W.2d 187 (Minn. 1979).

44. *North Star Research Inst. v. County of Hennepin*, 306 Minn. 1, 6, 236 N.W.2d 745, 757 (1975). See text accompanying note 24 *supra*.

45. 277 N.W.2d at 191. See note 32 *supra*. The court should not have entirely slighted the reasonable relationship requirement even though in the present case this factor was met. *Madonna Towers v. Commissioner of Taxation*, 283 Minn. 111, 167 N.W.2d 712 (1969), illustrates the need for such a requirement. In *Madonna Towers*, the court recognized that the home for the elderly, although claiming to be charitable, "would provide the good life for elderly people who [could] afford it." *Id.* at 117, 167 N.W.2d at 715 (emphasis added). The court withheld the exemption, noting that "[i]f the financing of the operation is to be successful, the patronage of the indigent and unwell would not be sought or encouraged." *Id.* *Rio Vista*, however, satisfied the reasonable relationship requirement. The only restriction imposed was that a tenant be el-

Vista's activities lessened the burdens of government, the reasons for the court's conclusion are not persuasive. First, it is obvious that the burden on the federal government was not decreased by the existence of the Rio Vista housing program because, without the program, the federal government would not have been under a duty to subsidize low- and moderate-income renters.⁴⁶ Second, it is mere speculation to assert, as the court did, that the government would have implemented federally assisted housing programs if private organizations did not.⁴⁷ Most importantly, however, the court failed to recognize that charitable property tax exemptions actually increase, rather than diminish, the burden on municipal governments.

The court's failure to recognize the increased burden that this extension of the charitable exemption places on municipal governments is a result of the court's failure to differentiate between the abstract concept of government—that of a monolithic unit—and the form government takes in reality—a hierarchical collection of diverse and often competing units. Extending the charitable property tax exemption to federally subsidized housing may well lessen the aggregate burden on federal, state, and local governments, but it will almost always have an adverse effect on municipal governments. As tax-exempt housing enters a municipality, the municipality's tax base will not increase with the demand for municipally financed services.⁴⁸ Thus, the grant of total tax-exempt status to low- and moderate-income housing projects forces municipalities to subsidize these orga-

igible for either the Rent Supplement Program or section 236 of the National Housing Act. Appellant's Brief and Appendix at 16, *Rio Vista Non-Profit Hous. Corp. v. County of Ramsey*, 277 N.W.2d 187 (Minn. 1979). This restriction was consistent with the company's objective of providing adequate housing to those who could not otherwise have afforded it. See 277 N.W.2d at 188, 190.

46. The court dismissed the trial court's finding that, because federal funds were spent, the burdens of government were increased. The supreme court reasoned that this finding was relevant only to the resolution of the second factor, which requires the court to decide whether the government subsidy should be considered a donation. 277 N.W.2d at 191. Because the court considered the fifth factor in terms of lessening the government's burdens, however, the increase in government expenditures should have been recognized. See *id.*

47. Section two of the Housing and Urban Development Act of 1968, 12 U.S.C. § 1701t (1976) states that in carrying out programs to meet the housing needs of the nation's lower-income families, "there should be the fullest practicable utilization of the resources and capabilities of private enterprise." *Id.* The Act does not indicate that the federal government will implement the program if private enterprise fails to do so.

48. In fact, the affected municipalities may suffer an erosion of their tax base. See generally A. BALK, *THE FREE LIST: PROPERTY WITHOUT TAXES* 18-19 (1971); E. FISCH, D. FREED & E. SCHACHTER, *supra* note 9, at 599-600.

nizations by providing services.⁴⁹ This forced subsidy undercuts the *quid pro quo* rationale⁵⁰ for the charitable exemption; the loss of tax revenue to the municipality is not offset by the fact that the municipality need not provide a charitable service for which it would normally be responsible. Furthermore, the nonfinancial benefits associated with such housing projects accrue not only to the municipalities in which they are situated, but also to the surrounding region and even to the nation as a whole.⁵¹

Of course, this pattern of enforced subsidization would not be inequitable if the housing projects involved were randomly distributed throughout the nation and if all municipalities taxed property at similar rates. A disproportionate amount of subsidized housing, however, is located in central cities.⁵² Thus, central city taxpayers must bear a greater proportion of the burden created by subsidized housing than must their suburban or rural counterparts. This misallocation is made even more undesirable by the fact that most central cities are already compelled to impose significantly greater tax rates than are the suburban municipalities that surround them.⁵³

This inequitable allocation of costs could produce un-

49. See generally sources cited in note 8 *supra*.

50. See text accompanying notes 8-9 *supra*.

51. Such projects help maximize the national goal of improving housing conditions. See Housing and Urban Development Act of 1968, § 2, 12 U.S.C. § 1701t (1976) (expounding "national goal . . . of 'a decent home and a suitable living environment for every American family'" (emphasis added)).

52. For instance, in the Minneapolis-St. Paul seven-county metropolitan area, approximately 32% of the population (637,800) is located in the two central cities, while 68% (1,351,020) is located in surrounding suburban areas. Telephone interview with James Hibbs, Office of State Demographer of Minnesota, in St. Paul (Apr. 8, 1980). The distribution of federally subsidized section 236 housing, however, is the reverse of this pattern. 62% of the housing projects within the metropolitan area are located in the central cities and 38% of the projects are located in the suburbs. Furthermore, when the original mortgage balances for section 236 housing projects are aggregated within each of these two categories and the categories are compared, the disparity is even greater: projects in the central cities account for 69% (\$90,932,100) of the total original mortgage balances, while suburban projects account for a mere 31% (\$41,270,600). These statistics were compiled from Department of Housing and Urban Development documents, which are on file with the *Minnesota Law Review*.

53. The following table illustrates selected 1979 municipal property tax rates, in mills per \$1000 assessed valuation (mill rates), for the Minneapolis-St. Paul metropolitan area:

Central Cities	Mill Rate
Minneapolis	43.421
St. Paul	36.242

wanted results. Central cities with high tax rates that are unable to increase the tax rates for nonexempt properties to cover the increased demand for services generated by tax-exempt housing projects might be forced to cut back tax-financed services.⁵⁴ This result would conflict with the goal of federal housing programs: the improvement of both housing and its environment. In addition, the increased municipal tax burden caused by a property tax exemption for subsidized housing is likely to lead municipalities to resist the construction of such

<u>Selected Inner Suburbs</u>	<u>Mill Rate</u>
Bloomington	14.841
Brooklyn Center	17.880
Brooklyn Park	14.944
Edina	9.046
Falcon Heights	14.885
Golden Valley	15.764
Maplewood	19.792
Richfield	17.861
Robbinsdale	20.952
Roseville	13.722
St. Anthony	11.425
St. Louis Park	18.525
<u>Selected Outer Suburbs</u>	<u>Mill Rate</u>
Afton	19.053
Arden Hills	8.819
Blaine	15.904
Chanhassen (Carver County, urban)	17.670
Chaska (urban)	14.730
Deephaven	15.697
Medicine Lake	6.700
Mound	14.002
North Oaks	7.770
Orono	14.000
Wayzata	12.677
West St. Paul	19.952
White Bear Lake	15.414
Woodbury	17.850

This table was compiled from the following sources, all of which are on file with the *Minnesota Law Review*: Anoka County, Anoka, Minn., Anoka County Services and Information: Property Taxes Payable in 1979; Carver County, Chaska, Minn., Mill rates for taxes payable in 1979; Dakota County, Hastings, Minn., Dakota County Tax Rates for Year 1979; Hennepin County, Minneapolis, Minn., Mill Rate Table: Tax Payable in 1979; Ramsey County, St. Paul, Minn., Mill Rates for 1979 Property Taxes in Ramsey County; Washington County, Stillwater, Minn., For Payable 1979.

54. Since property taxes constitute "the main revenue source for some of the most important collectively supplied goods and services," O. OLDMAN & F. SCHOETTL, *supra* note 17, at 137, a loss of property taxes could result in a loss of services.

housing within their borders.⁵⁵

In deciding *Rio Vista*, the Minnesota Supreme Court has joined the movement away from strict construction of the charitable exemption. This break from traditional principles, at least in this context, is ill-advised. It places an even heavier burden on the primary method of financing municipal services—the property tax—than the legislature appears to have intended.⁵⁶ Given the precarious financial position of many municipalities, the court should not have undertaken to readjust the pattern of subsidy to the further detriment of municipal governments.

55. Community resistance to federally subsidized housing projects is often manifested in an allegation that the projects have not complied with section 102 of the National Environmental Policy Act of 1969, 42 U.S.C. § 4332 (1976). See e.g., *Chick v. Hills*, 528 F.2d 445 (1st Cir. 1976); *Cedar-Riverside Environmental Defense Fund v. Hills*, 422 F. Supp. 294 (D. Minn. 1976); *Schicht v. Romney*, 372 F. Supp. 1270 (E.D. Mo. 1974).

56. Prior to *Rio Vista*, the Minnesota Legislature had decided that low-income housing should be assessed at 20% of market value. See text accompanying note 3 *supra*. Arguably, this action represents the legislature's judgment that low-income housing confers some peculiarly local benefits that municipalities must pay for as a *quid pro quo*. See text accompanying notes 8-9 *supra*. By readjusting the assessed value of low-income housing from 20% of market value to an effective rate of 0%, the court in *Rio Vista* contravened the legislature's judgment concerning the extent of peculiarly local benefits enjoyed by municipalities having low-income housing projects within their borders.

